

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 816**

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 20, 2016

The Assembly Judiciary Committee reports favorably and with committee amendments Senate Bill No. 816.

As amended and reported by the committee, Senate Bill No. 816 establishes a Personalized Handgun Authorization Commission which would be responsible for establishing performance standards for personalized handguns, also known as “smart guns” and “child proof guns.” The commission also would be responsible for approving and maintaining a roster of personalized handguns authorized for sale to the public.

In addition, the amended bill repeals certain sections of the current law. Under P.L.2002, c.130 (C.2C:58-2.2 et al.), three years after personalized handguns are available for retail purposes, it will be illegal for a firearms manufacturer or dealer to sell or transfer a handgun unless that handgun is a personalized handgun. The amended bill repeals certain sections of P.L.2002, c.130 (C.2C:58-2.2 et al.) and requires firearm retailers to have at least one personalized handgun approved by the commission for sale on the retail premises.

The Personalized Handgun Authorization Commission is to consist of seven members, including the Attorney General, Superintendent of State Police, the Commissioner of Health, or their respective designees all serving ex-officio. The remaining four members are to be appointed by the Governor as follows: (1) one member of the American Academy of Pediatrics; (2) one licensed firearms wholesaler, manufacturer, or retail dealer, or a representative of a New Jersey chapter of an organization that advocates for Second Amendment rights; (3) one representative of an organization that advocates against handgun violence; and (4) one engineer with substantial experience in radio frequency identification or biometric reading technology.

The amended bill requires the commission’s appointments to be made within six months of the substitute’s effective date. The commission members are to serve a term of four years from the date of their appointment and until their successors are appointed. The commission is to meet monthly during the first year following its establishment; thereafter, the commission is to meet once every six months or at the call of the chairman or a majority of the commission

members. The amended bill requires the commission to maintain a roster of all personalized handguns approved for retail sales to the public. The roster of approved personalized handguns is to be published on a website maintained by the New Jersey State Police and updated every six months. A copy of the roster is to be made available every six months to licensed firearms retail dealers in this State.

The amended bill requires the commission, within one year of organizing, to establish personalized handgun performance standards to serve as criteria for placement on the personalized handgun roster. The commission also would be required to identify and approve a list of independent laboratories to be used to determine whether handguns comply with the performance standards. At least one independent laboratory is to be identified and added to the list of approved laboratories within one year of the commission's organization. The amended bill prohibits an approved laboratory from being owned or operated by a handgun manufacturer or any organization that seeks to promote or restrict handgun ownership.

Independent laboratories would be permitted to apply to the commission for inclusion on the list. Once approved, a laboratory would utilize testing methods established by the commission to determine whether a handgun is compliant with the performance standards. The tests are to be conducted at the expense of the manufacturer or other entity seeking to include the handgun on the approved roster. At the conclusion of the tests, the laboratory is to issue to the commission a final test report stating whether the handgun met the commission's criteria.

The amended bill requires the commission to review the final test report and, within 45 days, make a final determination by majority vote as to whether the handgun should be included on the roster. The commission is to notify the handgun manufacturer, in writing, as to whether the handgun has been approved or denied for inclusion on the roster. A denial notification is required to provide a detailed description of the reasons for which the handgun failed to satisfy the commission's performance standards. Following an approval notice, a manufacturer, seller, or possessor of the handgun would be prohibited from altering the handgun design so that it no longer meets the commission's performance standards.

The amended bill also requires the Superintendent of State Police to issue an exemption certificate to any firearms retail dealer who demonstrates undue hardship. In determining whether to issue a certificate, the superintendent may consider the retail dealer's inventory size and annual sales revenue or income generated from customer purchases. A firearm retail dealer who demonstrates that the business's inventory consists entirely of firearms other than handguns is automatically entitled to an exemption certification. A retail dealer is required to maintain an original copy of the exemption certificate on premises at all times. In addition, a retail dealer in the process of

applying for an exemption certification may display a notarized copy of the application.

Within 60 days of the first personalized handgun being included on the roster, each firearms retail dealer would be required to have at least one personalized handgun approved by the commission for sale on the business's premises. In addition, the amended bill requires retail dealers to display personalized handguns in a conspicuous manner and in close proximity to a sign that displays a statement disclosing the unique features of personalized handguns.

The amended bill also requires a retail dealer to place an order for at least one personalized handgun within 21 days after its personalized handgun inventory is depleted. The retail dealer would be required to maintain the written records of the business's efforts to place an order for additional personalized handguns. The retail dealer also would be required to maintain a sign on the premises indicating that personalized handguns are routinely sold on the retail dealer's premises and will soon be available for purchase.

The amended bill requires the superintendent to designate law enforcement officers to inspect the personalized handgun inventory and records of licensed firearms retailers. The inspections are to be conducted at least once every two years at any time during the normal business hours of the firearm retailer's business.

Finally, the amended bill imposes penalties for retail dealers who fail to maintain a personalized handgun or an exemption certificate on the retail premises. Under the amended bill, a retail dealer is subject to a \$500 fine for a first offense and a \$1,000 fine for a second offense. For a third or subsequent offense, the retail dealer would be subject to a six month license suspension following notice and an opportunity to be heard. The amended bill also makes it a disorderly persons offense for tampering or attempting to tamper with a personalized handgun by intentionally interfering with the user-authorized functionality of the personalized technology. A disorderly persons offense is punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

As amended and reported by the committee, Senate Bill No. 816 (1R) is identical to the Assembly Committee Substitute for Assembly Bill No. 1426, also reported on this same date.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) create a Personalized Handgun Authorization Commission which would establish performance standards for personalized handguns and maintain a roster of personalized handguns authorized for sale to the public;

- 2) require the commission to identify and approve a list of independent laboratories to be used to determine whether personalized handguns comply with the performance standards;

3) require each firearm retail dealer to offer on the retail premises at least one personalized handgun approved by the commission;

4) establish an exemption certificate to be issued by the Superintendent of State Police to firearm retail dealers who demonstrate that selling personalized handguns would cause an undue hardship;

5) require firearm retail dealers to order at least one personalized handgun within 21 days of the business's inventory being depleted;

6) require law enforcement officers to inspect each firearm retail dealer's personalized handgun inventory;

7) impose penalties for retail dealers who fail to maintain a personalized handgun or an exemption certificate on the retail premises;

8) establish a disorderly persons offense of tampering with a personalized handgun;

9) and make technical corrections.

#### MINORITY STATEMENT

By Assemblyman Carroll

This proposal represents a rarity in New Jersey: the Members of the present majority implicitly admitting to having adopted a truly silly law. Fourteen years ago, this body passed a truly misguided law. Had it ever taken effect, it would have proscribed anyone from purchasing the vast majority of available handguns, restricting sales to so-called personalized firearms which, theoretically, would preclude anyone other than the owner from using them.

Not only did the technology not then exist for such weapons, even today the reliability of same is deeply problematic. When used for self-defense, in desperate situations, the life of the person holding a handgun depends upon its functioning properly, and the law should not require that one entrust her life to the vagaries of unreliable technology.

Indeed, were this technology feasible and reliable, instead of being expressly exempted from the mandate, all law enforcement officers would be required to carry personalized firearms, for their own safety and for that of their children. The fact that the law exempts the police demonstrates conclusively that extant technology fails to adequately safeguard the lives of those who depend upon it.

State government, having compiled a record of catastrophic mismanagement of the matters actually within its purview – income taxes, property taxes, spending, borrowing, pensions, transportation, school funding, and housing come readily to mind – ought to be loath to dictate product selection and marketing to a businessperson.

With this proposal, the Legislature should recognize the error of our ways, repeal the ill-considered mandate, and move New Jersey somewhat closer to the national mainstream, instead of representing an extreme outlier.